

**INSPECTIONS AND APPEALS DEPARTMENT[481]**

**Notice of Intended Action**

**Proposing rule making related to intermediate care facilities for the intellectually disabled  
and providing an opportunity for public comment**

The Inspections and Appeals Department hereby proposes to amend Chapter 64, “Intermediate Care Facilities for the Intellectually Disabled,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code sections 10A.104 and 135C.2.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 10A.104, 17A.7(2) and 135C.2.

*Purpose and Summary*

The Department completed a comprehensive review of Chapter 64 in accordance with the requirement in Iowa Code section 17A.7(2). This proposed rule making updates citations and references to pertinent federal law; aligns requirements for the purchase, transfer, assignment, or lease of a facility with current practices; and rescinds the adoption of federal standards that are duplicative of previously adopted federal law.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 481—Chapter 6.

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on January 31, 2023. Comments should be directed to:

Ashleigh Hackel  
Iowa Department of Inspections and Appeals  
Lucas State Office Building  
321 East 12th Street  
Des Moines, Iowa 50319  
Email: [ashleigh.hackel@dia.iowa.gov](mailto:ashleigh.hackel@dia.iowa.gov)

*Public Hearing*

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental

subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend subrule 64.5(1) as follows:

**64.5(1)** Within 48 hours, by letter, any reduction or loss of direct care professional or dietary staff lasting more than seven days which places the staffing ratio of the intermediate care facility for the intellectually disabled below that required ~~for licensing by 42 CFR 483.430(d)(3)~~. No additional residents shall be admitted until the minimum staffing requirements are achieved; (III)

ITEM 2. Amend subrules 64.5(7) and 64.5(8) as follows:

**64.5(7)** Prior to the purchase, transfer, assignment, or lease of an intermediate care facility for the intellectually disabled, the licensee shall:

*a.* Inform the department of the pending sale, transfer, assignment, or lease of the facility; and (III)

*b.* Inform the department of the name and address of the prospective purchaser, transferee, assignee, or lessee at least 30 days before the sale, transfer, assignment, or lease is completed; (III)

~~*c.* Submit a written authorization to the department permitting the department to release all information of whatever kind from the department's files concerning the licensee's intermediate care facility for the intellectually disabled to the named prospective purchaser, transferee, assignee, or lessee. (III)~~

**64.5(8)** Pursuant to the authorization submitted to the department by the licensee prior to the purchase, transfer, assignment, or lease of an intermediate care facility for the intellectually disabled, the department shall, upon request, send or give copies of all recent licensure surveys and of any other pertinent information relating to the facility's licensure status to the prospective purchaser, transferee, assignee, or lessee; costs for such copies shall be paid by the prospective purchaser.

ITEM 3. Amend paragraph **64.17(7)“c”** as follows:

*c.* For Title XIX residents, the department of ~~social services~~ health and human services shall continue funding for the temporary absence as provided under paragraphs “*a*” and “*b*” and in accordance with department of ~~social services~~ health and human services guidelines.

ITEM 4. Amend paragraph **64.18(2)“b”** as follows:

*b.* The resident, or the resident's legal guardian, shall be entitled to examine all information and shall have the right to secure full copies of the record at reasonable cost upon request, ~~unless the physician or qualified mental health professional determines the disclosure of the record or certain information contained in the record is contraindicated in which case the information will be deleted before the record is made available to the resident. This determination and the reasons for it must be documented in the resident's record by the physician or qualified mental health professional in collaboration with the resident's interdisciplinary team.~~ (II)

ITEM 5. Amend rule 481—64.34(135C) as follows:

**481—64.34(135C) Employee criminal record checks, child abuse checks and dependent adult abuse checks and employment of individuals who have committed a crime or have a founded abuse.** The facility shall comply with the requirements found in Iowa Code section 135C.33 ~~as amended by 2013 Iowa Acts, Senate File 347, and rule 481—50.9(135C)~~ related to completion of criminal record

checks, child abuse checks, and dependent adult abuse checks and to employment of individuals who have committed a crime or have a founded abuse. (I, II, III)

ITEM 6. Amend subparagraph **64.36(5)“a”(3)** as follows:

(3) A statement, in not less than 12-point type, that reads as follows: (II)

You have a right to appeal the facility’s decision to transfer or discharge you. If you think you should not have to leave this facility, you may request a hearing, in writing or verbally, with the Iowa department of inspections and appeals (hereinafter referred to as “department”) within 7 days after receiving this notice. You have a right to be represented at the hearing by an attorney or any other individual of your choice. If you request a hearing, it will be held no later than 14 days after the department’s receipt of your request and you will not be transferred before a final decision is rendered. Extension of the 14-day requirement may be permitted in emergency circumstances upon request to the department’s designee. If you lose the hearing, you will not be transferred before the expiration of either (1) 30 days following your receipt of the original notice of the discharge or transfer, or (2) no sooner than 5 days following final decision of such hearing, including the exhaustion of all appeals, whichever occurs later. To request a hearing or receive further information, call the department at (515)281-4115, or write to the department to the attention of: Administrator, Division of Health Facilities, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083. ~~(H)~~

ITEM 7. Amend subparagraph **64.36(6)“a”(3)** as follows:

(3) A statement, in not less than 12-point type, that reads as follows: (II)

You have a right to appeal the facility’s decision to transfer or discharge you on an emergency basis. If you think you should not have to leave this facility, you may request a hearing, in writing or verbally, with the Iowa department of inspections and appeals (hereinafter referred to as “department”) within 7 days after receiving this notice. You have a right to be represented at the hearing by an attorney or any other individual of your choice. If you request a hearing, it will be held no later than 14 days after the department’s receipt of your request. You may be transferred or discharged before the hearing is held or before a final decision is rendered. If you win the hearing, you have the right to be transferred back into the facility. To request a hearing or receive further information, call the department at (515)281-4115, or write to the department to the attention of: Administrator, Division of Health Facilities, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083. ~~(H)~~

ITEM 8. Amend rule 481—64.60(135C) as follows:

**481—64.60(135C) Federal regulations adopted—conditions of participation.** Regulations in 42 CFR Part 483, Subpart ~~D~~ I, Sections 410 to 480 ~~effective October 3, 1988~~, are adopted by reference and incorporated as part of these rules. A copy of these regulations is available on request from the Health Facilities Division, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319.

~~Classification of~~ The classifications for violations is are I, II, and III, determined by the division using the provisions in 481—Chapter 56, “Fining and Citations,” to enforce a fine to cite a facility.

NOTE: The federal interpretive guidelines are printed immediately following 481—Chapter 64.  
This rule is intended to implement Iowa Code section 135C.2(3).

ITEM 9. Rescind rule **481—64.61(135C)**.

ITEM 10. Amend **481—Chapter 64**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections ~~10A.202, 10A.402 10A.702, 135C.2(3), 135C.2(6), 135C.6(1), 135C.14, 135C.14(8), 135C.25, 135C.25(3), 135C.32, 135C.36, 227.4, 235B.1(6), and 235B.3(11)~~ 235E.2.